

Appl. No.: 10/632,980
Amdt. Dated: 13 January 2007
Reply to Office Action dated 09/13/2006

Remarks/Arguments

In the Office Action mailed 09/13/2006 the Examiner has rejected claims 1-20 under the judicial doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent Number 6,892,863 to Everett in view of Smith '747 or Huang '308. and rejected claims 1-20 under 35 U.S.C 103(a) as unpatentable over Irvine '973 in view of Everett '959 and Smith '747 or Penny '891 or Huang '308

Double Patenting Rejection

In making this rejection the Examiner cites the closure means of Smith or Huang to provide closure means lacking in Everett. In rejecting the claims under the doctrine of obvious-type double patenting, the Examiner states that Everett '863 shows most of the features of the present application, lacking the particulars of the end cap and cites the closure means of Smith or Huang to teach it is known to provide a removal closure means.

This rejection is respectfully traversed in that Smith merely discloses (column 1, lines 36-42) a simple concept of a bar 9 projecting through slots in the brake pad holder sides, the bar bent at one end to restrict movement of that end through the first slot, and having an aperture at the opposite end to receive a pin 10 to prevent removal of the bar 9 after the other end has projected through the second slot. Even though Smith may teach it is known to provide the removal closure means as disclosed in his patent, the combination of Smith with Everett is not remotely sufficient for a double patenting rejection in light of the particulars of the end cap as cited in the claim amendments herein.

The Examiner has cited the reference of Huang '308 as showing in figure 2 a similar device to that shown in Smith. The above argument against Smith applies equally well to that of Huang's box-like pad holder for receiving the brake pad through the bottom of the holder pad, i.e., it does not teach or suggest applicants claimed invention. Likewise, the combination with Everett is not sufficient for a double patenting rejection in light of the claim amendments herein.

Rejection under 35 U.S.C 103(a)

The Examiner has rejected claims 1-20 under 35 U.S.C 103(a) as unpatentable over Irvine '973 in view of Everett '959 and Smith '747 or Penny '891 or Huang '308. This rejection is respectfully traversed in light of the herein amendments to applicants' claims.

In rejecting claim 1 and citing Irvine, the Examiner calls attention to brake pad means 28 and the pad at 12 while stating that Irvine in Fig. 2 shows a brake pad similar to applicants' while admitting that Irvine lacks a showing of (1) multiple brake pads having different braking characteristics, or (2) closure means in the form of an end cap for complementary mating with the truncated end to secure the brake pads within the brake pad means. Review of "brake pad means 28 and the pad at 12" merely shows a retaining screw 38 received into a notch 16 in the single brake pad 12. This does not teach or suggest applicant's claimed end cap with its

shoulders and associated recess mating with complementary shoulders and associated recess of the brake pad holder. Further, there is no teaching or suggestion in Irvine of an end cap such as disclosed and claimed by the applicants.

The Examiner has cited Everett '959 to show brake pads with different braking compounds, Smith and Penny to show a brake shoe having multiple parts and Huang to show a pad holder with an integrally closed end. Smith and Huang are discussed above and Penny merely discloses (column 2, lines 38-41) a simple barrier comprising a retaining rod *f* passing transversely through the end of the shoe body, the rod *f* of Penny only indicating that some sort of end barrier could be conceived. Everett '959 shows brake pads with different braking compounds but has no further relation to applicants' invention. Thus, there is no teaching or suggestion in any of these references that they could somehow be combined with Irvine to teach an end cap such as disclosed and now claimed by the applicants.

It is thus submitted that amended Claim 1, especially with its further limitations to the end cap, is free of the '103 rejection in that none of the references, or the combination thereof, either teaches or suggests an end cap as now claimed.

Claims 2-6 are dependent directly or indirectly from Claim 1 and further recite limitations not taught or suggested by the references or the combination thereof. Claim 7 is rejected, however, the Examiner apparently overlooked that Claim 7 was canceled in applicants' response filed on 07 July 2006. Claim 8 is directly dependent from Claim 1 and further recites limitations not taught or suggested by the references or the combination thereof.

It is thus submitted that amended Claim 2-6, likewise with Claim 1, are free of the '103 rejection in that none of the references, or the combination thereof, either teaches or suggests applicants claimed invention.

Amended independent Claims 9 and 15, in view of additional limitations to the end cap as well as other features of applicants' invention, are submitted as free of the '103 rejection as the claimed invention is not taught or suggested by the references or the combination thereof.

Inasmuch as Claims 10-14 are dependent directly or indirectly from Claim 9 and further recite other limitations not taught or suggested by the references or the combination thereof, it is submitted that these claims are free of the '103 rejection. Likewise, as Claims 16-18 are dependent directly or indirectly from Claim 15 and further recite other limitations not taught or suggested by the references or the combination thereof, it is submitted that these claims are free of the '103 rejection.

Independent method Claim 19 and Claim 20 dependent therefrom are rejected with the comment that it would be obvious to insert the multiple pads sequentially. Claim 19 has been amended to recite the provision of closure means limitations not taught or suggested by the references or the combination thereof, and thus is submitted as free of the '103 rejection. Claim 20 recites further limitations to Claim 19 not taught or suggested by the references or the combination thereof, and thus is submitted as free of the '103 rejection.

Applicant again brings to the Examiner's attention the holding in *Hodosh v. Block Drug Co., Inc.* (Fed. Cir. 1986) 229 USPQ 182 wherein it was held that:

1) the claimed invention must be considered as a whole... (though the difference between claimed invention and prior art may seem slight, it may also have been the key to advancement of the art);

(2) the references must be considered as a whole and suggest the desirability and thus the obviousness of making the combination .. ;

(3) the references must be viewed without the benefit of hindsight vision afforded by the claimed invention .. ;

In accordance therewith it is suggested that the Examiner consider applicants' claimed invention as a whole and not merely seize upon similarities in selected references, that do not suggest the desirability and thus the obviousness of making the combination, to improperly reject applicants' claims. Likewise, it is suggested that the Examiner not view the references with the benefit of hindsight afforded by the present invention since no other cited reference teaches or suggests applicant's now claimed invention.

Inasmuch as there is no nexus in the combination of the references that their teachings would be capable of suggesting to one skilled in the art, without exercising inventive faculties, their combination in a manner as disclosed in applicants' claimed structure, it is submitted that any conclusions reached by the Examiner in relating the references to show the applicants' now claimed invention to be obvious would be an erroneous piecemeal application of the references.

The claims remaining in the case, that is, claims 1-6 and 8-20, have been amended, directly or indirectly, in accordance with the above discussion. Claim 7 has been canceled. It is respectfully requested that the Examiner's rejections be reconsidered, the remaining claims allowed, and the case passed to issue.

It may be of interest to the Examiner that foreign patents based on this application have issued as shown below. Other applications are pending and expected. Design patents D 495,282 and D 475,635 have issued in the US.

<u>Country</u>	<u>Filed</u>	<u>Issued</u>	<u>App/Pat No.</u>
UK	07/22/04	03/22/06	2,404,706
Taiwan	07/21/04	02/21/06	1,249,292
Netherlands	07/24/04	09/27/05	1,026,730

It is hereby certified that this response to the outstanding Office Action is being deposited with the United States Postal Service, postage prepaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on 13 January 2007.

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Respectively submitted,



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